

REMARKS

Applicants respectfully traverse the rejection of claims 1, 3-22, 24-39, 40 and 41 as being anticipated by Kubota (U.S. Patent No. 6,249,720), claim 2 as being obvious over Kubota in view of McMillan (U.S. Patent No. 5,797,134), and claim 23 as being obvious over Kubota in view of Lemelson (U.S. Patent No. 6,487,500).

Each of claims 1-41 recites a method of or an apparatus for assessing the ability of an operator to operate a vehicle relative to known good practices. None of the cited references discloses or teaches assessing vehicle operator performance relative to known good practices. It follows that none of the cited references can anticipate the pending claims or render the pending claims obvious.

Kubota does not disclose any consideration of known good practices. Despite applicants numerous attempts to highlight the recited claim element of assessing performance relative to known good practices, the Examiner appears intent on arguing primarily that Kubota's agent's reaction is a determination of driver performance. Moreover, the Examiner has not addressed the merits of claims 40 and 41 which more clearly recite known good practices.

Applicants hereby acknowledge that the word "performance" alone may be defined as the "manner in which an action is carried out" (Webster's Dictionary), in which case any display indicating a characteristic of an action may indicate performance. Thus, for example, Kubota's agent's reaction indicating the magnitude of applied brake pressure is an assessment of performance. However, the claims do not just recite an operator performance assessment, but further recite assessing the ability of the operator to operate the vehicle relative to known good practices. Therefore, the performance assessment of the pending claims requires at

least a consideration of a quality identified in Kubota as a known good driving practice.

Kubota, however, identifies no such known good driving practice.

As recited in claims 40 and 41, known good practices may include driving performance of a normal population, previously identified good driving performance, and good habitual driving behavior. Kubota only discloses an indication of a driver's off-average driving based on that driver's own past driving record. Using Kubota's disclosed system, there is no way to objectively qualify a driver's performance because Kubota does not disclose any standard for comparison except for a driver's own driving history. Instead of citing Kubota for a disclosure of known good practices, the Examiner interjects a subjective opinion that it is "a known good practice for a driver to not put oneself in a position where panic braking is required." This assertion is improper for several reasons.

The statement interjects a standard without support. By making the statement above, the Examiner has unilaterally decided, without any support from Kubota or any other reference, what the population driving norm is, i.e., that all sudden break pressure is indicative of poor driving. Contrarily, Kubota only discloses that its agent will react whenever a driver applies break pressure in a manner outside the driver's normal break application. Because Kubota teaches that its agent will eventually not react to break pressure that is indicative of a driver's normal break application, the agent will eventually not react to a bad driver that consistently applies habitual "panic breaking." Therefore, even according to Examiner's own statement that "panic breaking" is contrary to good practice, Kubota may be interpreted to actually sanction "panic breaking."

Kubota simply does not consider whether the normal break pressure of the driver is appropriate for the driving situation relative to known good practices. Examiner continues to point to study item data 292 for such a teaching. Applicants acknowledge that study item

data 292 contains information on vehicle operating condition and that the specification generally states that study item 292 is considered in determining agent actions. Applicants emphasize, however, that consideration of vehicle operating condition and driver operation does not teach the element of known good driving practice. Kubota does not provide, identify, suggest, or otherwise disclose a relation between vehicle operating condition, driver operation, and a known good practice standard. Therefore, Examiner fails to show how Kubota teaches known good driving practice.

Moreover, the Examiner has failed to address Applicant's assertion that sudden breaking can be a positive performance factor based on known good practices when that sudden breaking is in response to an unexpected road hazard. If sudden breaking can be a positive performance assessment based on known good practices, then the Examiner has failed to prove that Kubota inherently discloses a performance indicator of known good practice, and thus Kubota cannot teach the element of known good practice. At best, Kubota teaches that the agent's reaction may coincide, by happenstance, with an instance of bad driving, (e.g., when a situation requires, according to known good practice, sudden breaking) but this is not sufficient to indicate that Kubota's agent teaches driver performance based on a consideration of known good practices.

Lastly, in response to the implication of Examiners statement that it is "a known good practice for a driver to not put oneself in a position where panic braking is required," applicants note that while a small portion of the driving population may indeed be imbued with foresight into future driving hazards, accident statistics indicate that most drivers are not so well endowed. Therefore, many good drivers must still rely on fast reflexes requiring sudden breaking to avoid unforeseen driving hazards.

McMillan does not disclose or teach assessing vehicle operator performance based, on known good practices. Instead, McMillan discloses an apparatus and a method for monitoring, recording and communicating vehicle driving data for determining the insurance cost of a driver. McMillan discloses sending the collected information to a central processing center where the information is processed to determine the correct insurance cost. No determination of driver performance is made based on known good practices.

Lemelson does not disclose, in any manner, assessing driver performance.

Because none of Kubota, McMillan, or Lemelson discloses assessing vehicle operator performance based on performance of a normal population, previously identified good driving performance or good habitual driving behavior, none of the cited references can anticipate pending claims 1-41 or render pending claims 1-41 obvious.

CONCLUSION

For at least the reasons set forth above, Applicants respectfully request reconsideration and allowance of rejected claims 1-41.

Although Applicants believe that no other fees are due, the Commissioner is hereby authorized to charge any fees or to credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. In addition, if a petition for an extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. No. 13-2855 of Marshall, Gerstein & Borun LLP.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call its attorney at the number listed below.

Respectfully submitted,
MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-474-6300

By: 

Anthony G. Sitko
Registration No. 36,278
Attorney for Applicants

August 24, 2004

766105